

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

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In re:	:	Chapter 11
	:	
CIRCUIT CITY STORES, INC., <u>et al.</u> ,	:	Case No. 08-35653-KRH
	:	
	:	Jointly Administered
Debtors.	:	
-----X		

**RESPONSE OF LEXMARK INTERNATIONAL, INC. TO  
DEBTORS' THIRTY-THIRD OMNIBUS OBJECTION TO CLAIMS  
(MODIFICATION AND/OR RECLASSIFICATION OF CERTAIN CLAIMS)**

Lexmark International, Inc. ("**Lexmark**"), submits this response in opposition to the Debtor's Thirty Third Omnibus Objection to Claims (Modification and /or Reclassification of Certain Claims) (the "**Objection**"), which includes an objection to the proof of claim filed by Lexmark in this case on June 28, 2009 (Claim No. 7391), and for its response Lexmark avers as follows:

1. The Debtors do not dispute that Lexmark holds a claim against the Debtors' estates in the total amount of \$2,769,062.06.
2. In its proof of claim, Lexmark asserts that it holds a secured claim in the amount of up to \$1,365,658.00 on account of certain pre-petition setoff claims that it holds against the Debtors pursuant to 11 U.S.C. §§ 506(a) and 553(a). Lexmark's pre-petition setoff claims arise out of certain pre-petition agreements between Lexmark and Circuit City regarding promotional

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discounts, growth incentives, shared advertising expense, product placement fees and other promotional arrangements.

3. In its claim, Lexmark advised that the final amount of its setoff claim had yet to be determined and Lexmark reserved all rights with respect to the ultimate determination of such claim.

4. In the Objection, the Debtors assert that Lexmark only holds a secured claim in the amount of \$333,540.34.

5. The Objection fails to reveal the basis of the Debtors' contention that Lexmark's secured claim is only \$333,540.34 and as of the date of filing of this Response the Debtors have still not revealed to Lexmark the basis(es) for their objection to the secured portion of the Lexmark's claim.

6. Lexmark has recently completed its calculation as to the exact amount of its secured claim against the Debtor, and Lexmark asserts that its secured claim is no less than \$1,336,813.00.

7. Lexmark also objects to the Debtors' attempt to reserve the right to assert further objections to Lexmark's claim in the future. All objections to Lexmark's claim should be adjudicated and resolved at the same time.

WHEREFORE, Lexmark prays that the Objection be overruled and that the Court find that Lexmark holds a total claim against the Debtors' estates in the amount of \$2,769,062.06 and

a secured claim in the amount of \$1,336,813.00 and that its proof of claim be allowed in such amounts.

Dated: September 9, 2009

CHRISTIAN & BARTON, LLP

/s/ Jennifer M. McLemore

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> day of September, 2009, I caused a copy of the foregoing to be served by electronic means on the “2002” and “Core” lists and through the ECF system.

/s/ Jennifer M. McLemore

Jennifer M. McLemore

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